

TITLE 2. ADMINISTRATION**CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION**

Editor's Note: The Office of the Secretary of State publishes all Code Chapters on white paper (Supp. 02-1).

Editor's Note: This Chapter contains rules that were adopted under an exemption from the rulemaking provisions of the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 16-956(D). Exemption from A.R.S. Title 41, Chapter 6 means that these rules were not certified by the Attorney General or the Governor's Regulatory Review Council. Because this Chapter contains rules that are exempt from the regular rulemaking process, the Chapter is printed on blue paper. The rules affected by this exemption appear throughout this Chapter.

ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of Sections R2-20-101 through R2-20-113, repealed by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001; new Article 1, consisting of Sections R2-20-101 through R2-20-112, made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1).

Article 1, consisting of Sections R2-20-101 through R2-20-113, adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2).

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ARTICLE 1. GENERAL PROVISIONS**R2-20-101. Definitions**

In addition to the definitions provided in A.R.S. §§ 16-901 and 16-961, the following shall apply to the Chapter, unless the context otherwise requires:

1. "Act" means the Citizens Clean Elections Act set forth in the Arizona Revised Statutes, Title 16, Chapter 6, Article 2.
2. "Campaign account" means an account designated by a political committee that is used solely for political campaign purposes as required in A.R.S. § 16-902(C).
3. "Current campaign account" means a campaign account used solely for election campaign purposes in the present election cycle.
4. "Direct campaign purpose" includes, but is not limited to, materials, communications, transportation, supplies and expenses used toward the election of a candidate. This does not include the candidate's personal appearance, support, or support of a candidate's family member.
5. "Early contributions" means private contributions that are permitted pursuant to A.R.S. § 16-945.
6. "Election cycle," for the purposes of providing equalizing funds, means the time period between 21 days after the preceding general election and the current general election date.
7. "Expressly advocates" means:
 - a. Conveying a communication containing a phrase such as "vote for," "elect," "re-elect," "support," "endorse," "cast your ballot for," "(name of candidate) in (year)," "(name of candidate) for (office)," "vote against," "defeat," "reject," or a campaign slogan or words that in context can have no reasonable meaning other than to advocate the election or defeat of one or more clearly identified candidates.
 - b. Making a general public communication, such as in broadcast medium, newspaper, magazine, billboard, or direct mailer referring to one or more clearly identified candidates and targeted to the electorate of that candidate(s):
 - i. That in context can have no reasonable meaning other than to advocate the election or defeat of the candidate(s), as evidenced by factors such as the presentation of the candidate(s) in a favorable or unfavorable light, the targeting, placement, or timing of the communication, or the inclusion of statements of the candidate(s) or opponents, or
 - ii. In the 16 week-period immediately preceding a general election.
 - c. A communication within the scope of subsection (7)(b) shall not be considered as one that "expressly advocates" merely because it presents information about the voting record or position on a campaign issue of three or more candidates, so long as it is not made in coordination with a candidate, political party, agent of the candidate or party, or a person who is coordinating with a candidate or candidate's agent.
8. "Family member" means parent, grandparent, spouse, child, or sibling of the candidate or a parent or spouse of any of those persons.
9. "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts.
10. "Fund" means the Citizens Clean Elections Fund established pursuant to A.R.S. § 16-949(D).
11. "Future campaign account" means a campaign account that is used solely for campaign election purposes in an election that does not include the present or prior primary or general elections.
12. "Independent candidate" means a candidate who is registered as an independent or with no party preference or who is registered with a political party that is not qualified for representation on the ballot.
13. "Prior campaign account" means a campaign account used solely for campaign election purposes in a prior election.
14. "Public funds" includes all funds deposited into the Citizens Clean Elections Fund and all funds disbursed by the Commission to a participating candidate.
15. "Opposed" means a candidate who will appear on the ballot and:
 - a. In a primary election for the State House of Representatives, a candidate who has opposition for the same office from two members of the same party or will be opposed in the general election by two or more other candidates for the same office. Such opposition in the general election can be from an independent candidate, a candidate from another party, or a candidate who is a member of a political party that is not eligible to appear on the ballot.
 - b. In a party primary election for any office but the State House of Representatives, a candidate who has opposition for the same office from a member of the same party, or will be opposed in the general election by an independent, a candidate from another party, or a candidate who is a member of a political party that is not eligible to appear on the ballot.
 - c. In the general election for state representative, a candidate who has at least two opponents on the ballot, competing for election in the same district.
 - d. In the general election for any office but state representative, has at least one opponent on the ballot, competing for the same office.
16. "Solicitor" means a person who is eligible to be registered to vote in this state and seeks qualifying contributions from qualified electors of this state.

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section

repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1).

R2-20-102. Applicability

The Citizens Clean Elections Act and these rules apply to all candidates seeking office for governor, attorney general, secretary of state, treasurer, superintendent of public instruction, corporation commissioner, mine inspector, and legislator.

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1).

R2-20-103. Time Calculations

- A. General rule: in computing any period of time prescribed or allowed by the Act or these rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday. The term "legal holiday" includes New Year's Day, Martin Luther King Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday for employees of the state.
- B. Special rule for periods less than seven days: when the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.
- C. Special rule for service by regular mail: whenever the Commission or any person has the right or is required to do some act within a prescribed period after the service of any paper by or upon the Commission by regular mail, three days shall be added to the prescribed period.
- D. Special rule for service by certified mail: whenever the Commission or any person has the right or is required to do some act within a prescribed period after the service of paper by or upon the Commission, the time period shall begin on the date the recipient signs for the certified mail. If the recipient does not date the certified mail receipt, the postmark on the certified mail receipt will be used as the date of receipt.

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1).

R2-20-104. Certification as a Participating Candidate

- A. Prior activities. Candidates who sought office in a prior election cycle as nonparticipating candidates and who seek certification as a participating candidate in the current election shall ensure before filing an application to become a participating candidate pursuant to A.R.S. § 16-947, that any monies in the candidate's current election campaign account in excess of permitted personal monies, early contributions, and debt-retirement contributions, as defined in A.R.S. § 16-945(C), are:
 - 1. Spent lawfully in a way that does not constitute a direct campaign purpose;
 - 2. Remitted to the Fund, in the case of permitted early contributions; or
 - 3. Transferred out of the account as disposal of surplus monies.
 - 4. Any monies in the prior election campaign account shall not be used in the current election for direct campaign purposes.

- B. A nonparticipating candidate who accepts contributions up to the limits authorized by A.R.S. § 16-905, but later chooses to run as a participating candidate, shall:
 - 1. Make the change to participating candidate status during the exploratory period only;
 - 2. Return the amount of each contribution in excess of the \$100 individual contribution limit for participating candidates;
 - 3. Return all Political Action Committee (PAC) monies received;
 - 4. Not have spent any contributions exceeding \$100, or any part of contributions exceeding \$100;
 - 5. Comply with all provisions of A.R.S. § 16-941.
- C. Surplus monies. Surplus monies from a candidate's campaign account for a prior election cycle may be used by that candidate for certain expenses without affecting that candidate's eligibility to become a participating candidate under the Act. Use of monies from a prior account is permissible only if the monies:
 - 1. Are spent prior to April 30 of an election year;
 - 2. Do not otherwise meet the definition of "expenditure" under A.R.S. § 16-901(8); and
 - 3. The event or item purchased is completed or otherwise used and depleted prior to April 30 of an election year.
- D. Application. Pursuant to A.R.S. § 16-947, a candidate seeking certification shall submit a Commission-approved application to the secretary of state and submit a copy to the Commission. At the time the candidate submits his or her application for certification, the candidate shall file, with the Commission, a campaign finance report reflecting all campaign activity to date, in accordance with A.R.S. § 16-915. In the application, a candidate shall certify under oath that the candidate:
 - 1. Agrees to use all Clean Election funding for direct campaign purposes only;
 - 2. Has filed with the Commission a campaign finance report, showing all campaign activity to date in the current election cycle;
 - 3. Will comply with all requirements of the Act and Commission rules;
 - 4. Is subject to all enforcement actions by the Commission as authorized by the Act and Commission rules;
 - 5. Has the burden of proving that expenditures made by or on behalf of the candidate are for direct campaign purposes;
 - 6. Will keep and furnish to the Commission all documentation relating to expenditures, receipts, funding, books, records (including bank records for all accounts), and supporting documentation and other information that the Commission may request;
 - 7. Will permit an audit and examination of all receipts and expenditures including those made by the candidate, the candidate's authorized committee and any agent or person authorized to make expenditures on behalf of the candidate or committee. The candidate and the candidate's authorized committee shall also provide any material required in connection with an audit, investigation, or examination conducted by the Commission. The candidate and authorized committee shall facilitate the audit by making available in one central location, office space, records and such personnel as are necessary to conduct the audit and examination, and shall pay any amounts required to be repaid;
 - 8. Will submit the name and mailing address of the person who is entitled to receive equalizing fund payments on behalf of the candidate and the name and address of the campaign depository designated by the candidate.

Changes in the information required by this subsection shall not be effective until submitted to the Commission in a letter signed by the candidate or the committee treasurer;

9. Will pay any civil penalties included in a conciliation agreement or otherwise imposed against the candidate;
 10. Will file all campaign finance reports with the secretary of state in an electronic format.
- E.** If certified as a participating candidate, the candidate shall:
1. Only accept early contributions from individuals during the exploratory and qualifying periods that do not exceed \$100, in accordance with A.R.S. § 16-945. No contributions may be accepted from political action committees, political parties or corporations. The total contributions for a candidate for governor shall not exceed \$40,000. For all other candidates, the total early contributions shall not exceed 10 percent of the sum of the original primary and general election spending limits;
 2. Not accept any private contributions, other than early contributions and a limited number of \$5 qualifying contributions;
 3. Make expenditures of personal monies of no more than \$500 for legislative candidates and no more than \$1000 for statewide office candidates;
 4. Conduct all activity through a single campaign account. A participating candidate shall only deposit early contributions, qualifying contributions and Clean Elections funds into the candidate's current campaign account.
- F.** Personal loans. A participating candidate may loan his or her campaign committee monies during the exploratory and qualifying periods only. The total sum of the loans shall not exceed the personal monies expenditure limits set forth in A.R.S. § 16-941(A)(2). These loans shall promptly be repaid with Clean Elections funds if the participating candidate qualifies for Clean Elections funding. Loans from a bank, or other institution listed in A.R.S. § 16-901(5)(b)(vii) to a candidate or his or her campaign committee shall be considered personal monies and shall not exceed the personal monies expenditure limits set forth in A.R.S. § 16-941(A)(2).
- G.** Officeholder Expenses. Prior to April 30 of an election year, an elected official may raise or spend money to defray the expense of performing officeholder duties as follows:
1. The candidate may first exhaust all surplus monies from prior campaign accounts pursuant to subsection (C) of this rule or may use personal monies for officeholder expenses;
 2. Money raised shall be only from individuals and the maximum raised from an individual during the election cycle shall not exceed the early contribution limit;
 3. The sum of the money raised or spent shall not exceed two times the early contribution limit applicable to the officeholder's current office;
 4. For an officeholder's future campaign as a:
 - a. Participating candidate-
 - i. Money raised pursuant to this subsection will not be deemed early contributions, and
 - ii. Personal money spent pursuant to this subsection shall not apply to personal money limits provided in A.R.S. § 16-941(A)(2).
 - b. Nonparticipating candidate-
 - i. Money raised or spent pursuant to this subsection will not be calculated in matching funds to opponents as provided in A.R.S. § 16-952, and
 - ii. Money raised or spent pursuant to this subsection will not trigger the reporting requirements provided in A.R.S. §§ 16-941(D) and 16-958.
 - c. Any money raised or spent in excess of the limits established in this subsection, however, shall be calculated as early contributions or personal monies for participating candidates, or for matching funds and reporting requirements for nonparticipating candidates;
5. Money raised or spent for officeholder expenses shall be reported under campaign finance reporting requirements pursuant to A.R.S. Title 16, Chapter 6, Article 1 as follows:
- a. The officeholder shall establish an account for officeholder expenses, which shall be separate from any candidate campaign account;
 - b. The account shall be designated on the statement of organization as "Officeholder Expense Account;" and
 - c. Any money remaining in the officeholder expense account after April 30 of an election year shall either not be spent for the remainder of the calendar year, or shall be remitted to the clean elections fund;
6. Money in the officeholder expense account shall not be used for direct campaign purposes or in connection with the officeholder's future campaign for elective office; and
7. Permissible uses of the money in the officeholder expense account include:
- a. Expenditures for office equipment and supplies;
 - b. Expenditures for work-related travel;
 - c. Donations to tax-exempt charitable organizations; or
 - d. Expenditures to meet or communicate with constituents.
- H.** A participating candidate may raise early contributions for election to one office and choose to run for election to another office during the exploratory period only.
- I.** A candidate may accept qualifying contributions before the candidate is certified as a participating candidate. A candidate who accepts qualifying contributions prior to being certified as a participating candidate shall file his or her application for certification no later than January 31 of an election year.
- J.** If the Commission has reason to believe by a preponderance of the evidence that a participating candidate is not in compliance with the act or rules, the Commission may decertify a candidate, deny or suspend funding, order repayment of funds, or impose any other penalty the Commission deems appropriate.

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 9 A.A.R. 3506, effective April 2, 2002 (Supp. 03-3).

R2-20-105. Certification for Funding

- A.** After a candidate is certified as a participating candidate, pursuant to A.R.S. § 16-947, in accordance with the procedure set forth in R2-20-104, that candidate may collect qualifying contributions only during the qualifying period.
- B.** A participating candidate must submit to the secretary of state, a list of names of persons who made qualifying contributions, an application for funding prescribed by the secretary of state, the minimum number of original reporting slips, and an amount equal to the sum of the qualifying contributions collected pursuant to A.R.S. § 16-950 no later than one week after the end of the qualifying period. A candidate may develop his or her own three-part reporting slip for qualifying contributions, or one that is photocopied or computer reproduced, if the form substantially complies with the form prescribed by the

Commission. The candidate must comply with the Citizens Clean Elections Act and ensure that the original qualifying slip is tendered to the secretary of state, a copy remains with the candidate, and that a copy is given to the contributor.

- C. A solicitor who seeks signatures and qualifying contributions on behalf of a participating candidate shall provide his or her residential address, typed or printed name and signature on each reporting slip. The solicitor shall also sign a sworn statement on the contribution slip avowing that the contributor signed the slip, that the contributor contributed the \$5, that based on information and belief, the contributor's name and address are correctly stated and that each contributor is a qualified elector of this state. Nothing in this rule shall prohibit the use of direct mail to obtain qualifying contributions nor prohibit the contributor from also being the solicitor.
- D. The secretary of state has the authority to approve or deny a candidate for Clean Elections funding, pursuant to A.R.S. § 16-950(C) based upon the verification of the qualifying contribution forms by the appropriate county recorder. The county recorder shall disqualify any qualifying contribution forms that are:
 1. Unsigned by the contributor;
 2. Undated; or
 3. That the recorder is unable to verify as matching signature of a person who is registered to vote, on the date specified inside the electoral district the candidate is seeking.
- E. The secretary of state will notify the candidate and the Commission regarding the approval or denial of Clean Election funds. If the result of the random sample is from ninety percent to one hundred ten percent of the slips needed to qualify for funding, a candidate who is denied clean elections funding after all of the slips are verified is eligible to submit supplemental qualifying contribution forms for one additional opportunity to be approved for funding pursuant to subsection (G) of this rule.
- F. The amount equal to the sum of the qualifying contributions collected and tendered to the secretary of state pursuant to A.R.S. § 16-950(B) will be deposited into the fund, and the amount tendered will not be returned to a candidate if a candidate is denied clean campaign funding.
- G. In accordance with the procedure pursuant to A.R.S. § 16-950(C), if the secretary of state determines that the result of the five percent random sample is from 90 percent to 110 percent of the slips needed to qualify for funding, then the secretary of state shall send all of the slips for verification. If the county recorder has verified all of the candidate's signature slips and there is an insufficient number of valid qualifying contribution slips to qualify the candidate for funding, the candidate may make only one supplemental filing of additional qualifying contribution slips and qualifying contributions to the secretary of state if all of the following apply:
 1. The candidate files at least the minimum number of additional slips needed to qualify for funding,
 2. The slips are not receipts for duplicate contributions from individuals who have previously contributed to that candidate, and
 3. The period for filing qualifying contributions slips has not expired.
- H. The secretary of state shall forward facsimiles of all of the supplemental qualifying contribution slips to the appropriate county recorders for the county of the contributors' addresses as shown on the contribution slips. The county recorder shall verify all of the supplemental slips within 10 business days after receipt of the facsimiles and shall provide a report to the secretary of state identifying as disqualified any slips that are

unsigned by the contributor or undated or that the recorder is unable to verify as matching the signature of a person who is registered to vote, on the date specified on the slip, inside the electoral district of the office the candidate is seeking. On receipt of the report of the county recorder on all supplemental slips, the secretary of state shall calculate the candidate's total number of valid qualifying contribution slips and shall approve or deny the candidate for funds.

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 9 A.A.R. 3506, effective April 30, 2002 (Supp. 03-3).

R2-20-106. Distribution of Funds to Certified Candidates

- A. Before the initial disbursement of funds, the Commission shall review the candidate's funding application and all relevant facts and circumstances and:
 1. Verify that the number of signatures on the candidate's nominating petitions equals or exceeds the number required pursuant to A.R.S. § 16-322 as follows:
 - a. If the application is submitted before the March 1 voter registration list is determined, the Commission shall verify that the number of signatures on the candidate's nominating petitions equals or exceeds 115 percent of the number required pursuant to A.R.S. § 16-322 based on the prior election voter registration list as determined by the secretary of state; or
 - b. If the application is submitted after the current year March 1 voter registration list is determined the Commission shall verify that the number of signatures on the candidate's nominating petitions is equal to or greater than the number required pursuant to A.R.S. § 16-322.
 2. Determine that the required number of qualifying contributions have been received and paid to the secretary of state for deposit in the Fund; and
 3. Determine whether the candidate is opposed in the election.
- B. In making the reviews, verifications, and determinations in subsection (A)(3), the Commission shall consider all relevant facts and circumstances, and it shall not be bound by election formalities such as the filing of nominating petitions by others in determining whether an applicant is opposed. Among other evidence the Commission may consider is the existence of exploratory committees or filings made to organize campaign committees of opponents and other like indicia.
- C. The Commission may review and affirm or change its determination that the candidate is or is not opposed until the ballot for the election is established.
- D. Within seven days after a primary election and before the secretary of state completes the canvass, the Commission shall disburse funds for general election campaigns to the participating candidates who received the greatest number of votes at each primary election, provided that the candidate with the highest number of votes out of the total number of votes, has at least two percentage points greater than the candidate with the next highest votes based on the unofficial results as of that date. In a legislative race for the Arizona House of Representatives, the Commission shall disburse funds for general election campaigns to participating candidates with the highest or second highest number of votes cast, provided such candidate received votes totaling at least two percentage points, of the

total ballots cast, larger than the vote total cast for the candidate with the third highest vote total.

- E. Promptly after the secretary of state completes the canvass, the Commission shall disburse funds for general election campaigns to all eligible participating candidates to whom payment has not been made. If a participating candidate has received funds from the Commission pursuant to subsection (D) and the canvass or recount determines that the candidate is not eligible to appear on the general election ballot, the participating candidate shall return all unused funds to the fund within 10 days after such determination is made. That candidate shall make no promissory payments from the general election fund from the date of the canvass.
- F. The Commission may refuse to distribute funds to participating candidates in cases of fraud or illegal activity committed by the participating candidate.

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R.

1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1).

R2-20-107. Use of Clean Elections Funds

- A. A participating candidate shall use funds in the candidate's current campaign account to pay for goods and services for direct campaign purposes only. Funds shall be disbursed and reported in accordance with A.R.S. § 16-948(C).
- B. A participating candidate shall not use funds in the candidate's campaign account for:
 1. Costs of legal defense in any campaign law enforcement proceeding.
 2. Food for staff and volunteers exceeding the monetary limits set forth in A.R.S. § 38-624.
 3. Indirect campaign purposes, including, but not limited to:
 - a. The candidate's personal support;
 - b. The candidate's personal appearance;
 - c. Capital assets having a value in excess of \$500 and a useful life extending beyond the end of the current election period determined in accordance with generally accepted accounting principles;
 - d. A contribution or transfer of funds to the campaign of another;
 - e. An independent expenditure;
 - f. A loan to self or to another. This does not include the loans acceptable under R2-20-104(F);
 - g. A gift;
 - h. Any payment or transfer for which compensating value is not received;
 - i. Compensation to the candidate;
 - j. Compensation to a candidate's family member unless employed as a campaign staff member for fair market value;
 - k. A contribution to any political party;
 - l. Retroactive payments of any kind;
 - m. Excessive expenditures in excess of any of the limitations or in excess of fair market value of goods or services received;
 - n. Post-election expenditures. Expenditures incurred after the close of the primary (if the candidate did not win the primary election) or general election periods, unless it can be shown it was a cost associated with winding down the campaign;
 - o. Civil or criminal penalties;
 - p. Illegal purposes;
 - q. Transferring funds to another committee; or

- r. Paying bills, loans or debt from a prior campaign cycle.

- C. Any expenditure made by the candidate or the candidate's committee that cannot be documented as a direct expenditure shall promptly be repaid to the Fund with the candidate's personal monies.
- D. A participating candidate's payment from a campaign account to a political committee or civic organization is not a contribution if the payment is reasonable in relation to the value received. Payment of customary charges for services rendered, such as for printing voter or telephone lists, and payment of not more than \$150 per person to attend a political event open to the public or to party members shall be considered reasonable in relation to the value received.
- E. Upon written request from a candidate, the Commission shall determine whether a planned campaign expenditure or fund-raising activity is permissible under the Act. To make a request, a candidate shall submit a written description of the planned expenditure or activity to the Commission. The Commission shall inform the candidate whether an enforcement action will be necessary if the candidate carries out the planned expenditure or activity. The Commission shall ensure that the candidate can rely on a "no action" letter. A "no action" letter applies only to the candidate who requested it.
- F. Joint expenditures. Expenditures may be made in conjunction with other candidates, but each candidate shall pay his or her proportionate share of the cost. A candidate's payment for an advertisement, literature, material, campaign event or other activity shall be considered a joint expenditure including, but not limited to, the following criteria:
 1. The activity includes express advocacy of the election or defeat of a second candidate;
 2. The purpose of the material or activity is to promote or facilitate the election of a second candidate;
 3. The use and prominence of a second candidate or his or her name or likeness in the material or activity;
 4. The material or activity includes an expression by a second candidate of his or her view on issues brought up during the election campaign;
 5. The timing of the material or activity in relation to the election of a second candidate;
 6. The distribution of the material or the activity is targeted to a second candidate's electorate; or
 7. The amount of control a second candidate has over the material or activity.

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R.

1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1).

R2-20-108. Voluntary Termination of Participating Candidate Status

- A. Voluntary termination of participating candidate status may only occur before the end of the qualifying period. To withdraw from participating candidate status, a candidate shall send a letter to the Commission stating the candidate's intent to withdraw and the reason for the withdrawal. The candidate shall not accept any private monies until the withdrawal is approved by the Commission. The Commission shall act on the withdrawal request within seven days. If the Commission takes no action in the seven-day time period, the withdrawal is automatic and the candidate shall immediately begin the process of returning public funds to the Fund.
- B. A candidate, whose withdrawal has been approved by, or occurred by lack of action of the Commission, shall:

1. No longer be eligible to receive public funding.
2. Return all Clean Elections funds, spent and unspent, to the Fund within 30 calendar days after he or she ceases to be a participating candidate.
- C. A participating candidate who withdraws prior to submitting qualifying contributions and an application for funds to the secretary of state shall use the candidate's best efforts to return all qualifying contributions collected to the contributors within 30 days of the candidate's withdrawal. If a contributor cannot be located, the qualifying contributions collected by the candidate shall be remitted to the Fund.
- D. Failure to comply with the requirements of this Section may result in an enforcement action against the participating candidate.
3. Original and supplemental campaign finance reports filed pursuant to A.R.S. § 16-941 shall include the same information regarding receipts and disbursements as required by A.R.S. § 16-915.
- D. Independent expenditures.
 1. Any individual, corporation, political party or membership organization that makes independent expenditures cumulatively exceeding the amount prescribed in A.R.S. § 16-941(D) in an election cycle that expressly advocate the election or defeat of a specific candidate, as defined in R2-20-101(7), shall file reports with the secretary of state in accordance with A.R.S. § 16-958.
 2. These reports must identify the office and the candidate or group of candidates whose election or defeat is being advocated, and state whether it is election or defeat that is being advocated. The Commission views an expenditure that advocates the election or defeat of a candidate as being made on behalf of the candidate.
 3. The person who fails to file a report pursuant to this subsection shall be subject to a civil penalty as prescribed in A.R.S. § 16-942(B).
 4. In determining whether a communication shall be reported pursuant to A.R.S. §§ 16-941(D) and 16-958, the Commission shall consider whether the communication expressly advocates the election or defeat of a clearly identified candidate and was not made in concert with a candidate. In determining that a communication expressly advocates the election or defeat of a candidate, rather than a communication that advocates an issue, the Commission will review the following three components.
 - a. Even if it is not presented in the clearest, most explicit language, speech is "express" if its message is unmistakable, unambiguous, and suggestive of only one plausible meaning.
 - b. Speech may only be termed "advocacy" if it presents a clear plea for action, and thus speech that is merely informative is not covered by the act.
 - c. It must be clear what action is advocated. Speech cannot be "express advocacy of the election or defeat of a clearly identified candidate" when reasonable minds could differ as to whether it encourages a vote for or against a candidate or encourages the reader to take some other kind of action. If any reasonable alternative reading of speech can be suggested, it cannot be express advocacy subject to the act's disclosure requirements.

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1).

R2-20-109. Reporting Requirements

- A. End of qualifying period. At the end of the qualifying period, a participating candidate shall file a report with the Commission consisting of a recap of all early contributions received, including personal monies and the expenditures of such monies. If the recap shows any amount unspent by a participating candidate, the report shall be accompanied by a check from the candidate's campaign account that will refund all unspent early contributions to the Fund, pursuant to A.R.S. § 16-945(B).
- B. Use of assets. A participating candidate may use assets such as signs, pamphlets, and office equipment from a prior election cycle only after the candidate's current campaign acquires the assets for an amount equal to the fair market value of the assets. If the candidate was a participating candidate during the prior election cycle, the cash payment shall be made to the Fund. If the candidate was not a participating candidate during the prior election cycle, the cash payment shall be made to the prior campaign. If the prior campaign account of a nonparticipating candidate is closed, the payment shall be made to the candidate.
- C. Reporting of transactions; Secretary of State's computer software. All candidates shall report all receipts and disbursements for their current campaign account using the campaign finance computer software provided by the Secretary of State pursuant to A.R.S. § 16-958(E) as follows:
 1. In accordance with A.R.S. § 16-915 and using the appropriate account code in the campaign finance software, candidates shall identify expenditures made before the general election period that consist of a contract, promise, or agreement to make an expenditure during the general election period. Goods or services to be furnished in the general election period are to be reported in accordance with this rule. The Commission shall treat such expenditures as though made during the general election period, and equalizing funds pursuant to A.R.S. § 16-952 shall be paid at the start of the general election period.
 2. Expenditures for consulting, advising, or other such services to a candidate shall include a detailed description of what is included in the service and an allocation of services to a particular election. The Commission may treat such expenditure as though made during the general election period, and equalizing funds pursuant to A.R.S. § 16-952 shall be paid at the start of the general election period.
- E. The following will be considered to be a "contribution during the election cycle to date" or "expenditures . . . made through the end of the primary election period" for purposes of reporting under A.R.S. §§ 16-941(B)(2) and 16-958(A):
 1. A contribution to a candidate to retire debt from a prior election cycle if deposited into the current campaign account;
 2. Any contributions received and placed in a future account or expenditures made during the current election cycle;
 3. Surplus funds transferred into the current campaign account;
 4. Contributions received or expenditures made beginning 21 days after the date of the prior election
- F. Recap report. Each participating candidate shall include a recap of all expenditures made in connection with an election, all contributions received in the election cycle in which such election occurs, and all payments made from such candidate's campaign fund to the Citizens Clean Elections Fund. If the recap shows any amount unspent by a participating candidate, the report shall be accompanied by a check from the candi-

date's campaign account that will refund to the Fund all unspent funds provided by the Fund.

- G. Electronic format. All reports shall be filed in electronic format in accordance with A.R.S. § 16-958(E). The Commission shall coordinate with the secretary of state to make electronic-filing computer software available to candidates and their committees. If a report is specifically requested by a candidate or campaign committee, the Commission will deliver copies of reports required under A.R.S. § 16-958. Otherwise, such reports shall be available on the secretary of state's web site.

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1).

R2-20-110. Campaign Accounts

- A. During an election cycle, each participating and nonparticipating candidate shall conduct all campaign financial activities through a single, current election campaign account and any petty cash accounts as are permitted by law.
- B. If a nonparticipating candidate conducts campaign financial activities for the current election cycle through more than one account, the Commission will consider all campaign financial activities for purposes of equalizing funds.
- C. A candidate may maintain a campaign account other than the campaign account described in subsection (A) if the other campaign account is for a campaign in a prior election cycle in which the candidate was not a participating candidate.
- D. During the exploratory period, a candidate may receive debt-retirement contributions for a campaign during a prior election cycle if the funds are deposited in the account for that prior campaign. A candidate shall not deposit debt-retirement contributions into current campaign accounts.

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1).

R2-20-111. Books and Records Requirements

- A. All candidates shall maintain at a single location within the state, the books and records of financial transactions, and other information required by A.R.S. § 16-904. In all cases, such location shall be that of the principal headquarters of the candidate's campaign, and at such location all such information shall be made available for inspection by the Commission during the regular business hours of the Commission.
- B. The location of each candidate's principal campaign headquarters may be maintained in the same county as that of the residence of the candidate or in Maricopa County.
- C. Any request to inspect a candidate's records under A.R.S. § 16-958(F) shall be in writing and shall be delivered to the candidate and his or her campaign committee chair, with a copy to the Commission, 10 or more calendar days before the proposed date of the inspection. If the request is made two weeks before the primary or general election, the request shall be delivered at least two business days before the proposed date of inspection. Every request shall state with reasonable particularity the records sought.
- D. The inspection shall occur at a location agreed upon by the candidate and the person making the request. If no agreement can be reached, the inspection shall occur at the Commission office.
- E. The inspection shall occur during the Commission's regular business hours and shall be limited to a two-hour time period.

- F. The requesting party may obtain copies of records for a reasonable fee. The Commission shall not be responsible for making copies. The person in possession of the records shall produce copies within a reasonable time of the receipt of the copying request.
- G. The Commission will not permit public inspection of records if it determines that the inspection is for harassment purposes.
- H. If a person who requests to inspect a candidate's records under A.R.S. § 16-958(F) is denied such a request, the requesting party shall notify the Commission. The Commission may enforce the public inspection request by issuing a subpoena pursuant to A.R.S. § 16-956(C) for the production of any books, papers, records, or other items sought in the public inspection request. The subpoena shall order the candidate to produce:
 1. All papers, records, or other items sought in the public inspection request;
 2. No later than two business days after the date of the subpoena; and
 3. To the Commission's office during regular business hours.
- I. Any person who believes that a candidate or a candidate's campaign committee has not complied with this Section may appeal to Superior Court.

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1).

R2-20-112. Inaugural Expenses

This Section shall apply only to statewide candidates who were participating candidates during the prior election cycle, were elected to office and wish to raise money for inauguration.

1. Beginning the first day after the official declaration of general election results, and ending February 15 of the following year, participating candidates for statewide office, who were successful in the general election, may solicit and receive contributions and make expenditures to pay for an inaugural ceremony or event if such financial activity is made solely in connection with that candidate's inauguration in January following the election.
2. If a participating candidate receives contributions that are greater than the expenses incurred for an inaugural ceremony or event, that candidate shall donate any excess contributions to the Citizens Clean Elections Fund within 60 days of such ceremony or event.
3. All financial activity undertaken by a candidate pursuant to this Section shall be managed through a specifically segregated fund, established to defray expenses of an inauguration ceremony or event. The monies contained in such inauguration fund shall be kept separate within the candidate's campaign account used for the successful election. A report of all receipts and expenditures regarding the inaugural fund shall be filed by the first day of March immediately following the election.
4. A candidate's financial activity related to an inaugural ceremony or event shall not prevent that candidate from becoming a participating candidate for the next election if that candidate has complied with the provisions of this Section. Such candidate's inaugural financial activity shall not be considered a contribution or expenditure for the purpose of a future election nor count toward any contribution or expenditure limit applicable to such election.

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1).

R2-20-113. Repealed**Historical Note**

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1).

ARTICLE 2. COMPLIANCE AND ENFORCEMENT PROCEDURES**R2-20-201. Scope**

These rules provide procedures for processing possible violations of the Citizens Clean Elections Act.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-202. Initiation of Compliance Matters

Compliance matters may be initiated by a complaint or on the basis of information ascertained by the Commission in the normal course of carrying out its statutory responsibilities.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-203. Complaints

- A. Any person who believes that a violation of any statute or rule over which the Commission has jurisdiction has occurred or is about to occur may file a complaint in writing to the Executive Director, Citizens Clean Elections Commission, 4001 North Third Street, Suite 200, Phoenix, AZ 85012.
- B. A complaint shall conform to the following:
 1. Provide the full name and address of the complainant; and
 2. Contents of the complaint shall be sworn to and signed in the presence of a notary public and shall be notarized.
- C. All statements made in a complaint are subject to the statutes governing perjury. The complaint should differentiate between statements based upon personal knowledge and statements based upon information and belief.
- D. The complaint shall conform to the following provisions:
 1. Clearly identify as a respondent each person or entity who is alleged to have committed a violation;
 2. Statements which are not based upon personal knowledge shall be accompanied by an identification of the source of information which gives rise to the complainant's belief in the truth of such statements;
 3. Contain a clear and concise recitation of the facts which describe a violation of a statute or rule over which the Commission has jurisdiction; and
 4. Be accompanied by any documentation supporting the facts alleged if such documentation is known of, or available to, the complainant.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 9 A.A.R. 3511, effective May 21, 2002 (Supp. 03-3).

R2-20-204. Initial Complaint Processing; Notification

- A. Upon receipt of a complaint, the Administrative Counsel shall review the complaint for substantial compliance with the technical requirements of R2-20-203, and, if it complies with those requirements, shall within five days after receipt notify each respondent that the complaint has been filed, advise each respondent of Commission compliance procedures, and mail each respondent a copy of the complaint.
- B. If a complaint does not comply with the requirements of R2-20-203, the Administrative Counsel shall so notify the complainant and any person or entity identified therein as respondent, within the five-day period specified in subsection A, that no action should be taken on the basis of that complaint. A copy of the complaint shall be mailed with the notification to each respondent.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-205. Opportunity for No Action on Complaint-generated Matters

- A. A respondent shall be afforded an opportunity to demonstrate that no action should be taken on the basis of a complaint by submitting, within 14 days from receipt of a copy of the complaint, a letter or memorandum setting forth reasons why the Commission should take no action.
- B. The Commission shall not take any action, or make any finding, against a respondent other than action dismissing the complaint, unless it has considered such response or unless no such response has been served upon the Commission within the 14 day period specified in subsection (A).
- C. The respondent's response must be notarized. The respondent's failure to respond in accordance with subsection (A) within 14 days of receiving the complaint may be viewed as an admission to the allegations made in the complaint.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-206. Administrative Counsel's Recommendation on Complaint-generated Matters

- A. Following either the expiration of the 14 day period specified by R2-20-205 or the receipt of a response as specified by R2-20-205(A), whichever occurs first, the Administrative Counsel may recommend to the Commission whether it should find reason to believe that a respondent has committed or is about to commit a violation of a statute or rule over which the Commission has jurisdiction.
- B. The Administrative Counsel may recommend that the Commission find that there is no reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has been committed or is about to be committed, or that the Commission otherwise dismiss a complaint without regard to the provisions of R2-20-205(A).
- C. Neither the complainant nor the respondent has the right to appeal the Administrative Counsel's recommendation made pursuant to subsection (A) or (B) because the recommendation is not a final administrative action.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-207. Internally Generated Matters; Referrals

- A. On the basis of information ascertained by the Commission in the normal course of carrying out its statutory responsibilities, or on the basis of a referral from an agency of the state, the

Administrative Counsel may recommend in writing that the Commission find reason to believe that a person or entity has committed or is about to commit a violation of a statute or rule over which the Commission has jurisdiction.

- B. If the Commission finds reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or is about to occur, the Administrative Counsel shall notify the respondent of the Commission's decision and shall include a copy of a staff report setting forth the legal basis and the alleged facts which support the Commission's action.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R.
588, effective November 27, 2001 (Supp. 02-1).

R2-20-208. Complaint Processing; Notification

- A. If the Commission, either after reviewing a complaint-generated recommendation as described in R2-20-206 and any response of a respondent submitted pursuant to R2-20-205, or after reviewing an internally-generated recommendation as described in R2-20-207, determines by an affirmative vote of at least three of its members that it has reason to believe that a respondent has violated a statute or rule over which the Commission has jurisdiction, the Commission shall notify such respondent of the Commission's finding by letter, setting forth the sections of the statute or rule alleged to have been violated and the alleged factual basis supporting the finding.
- B. If the Commission finds no reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred, or otherwise terminates its proceedings, the Administrative Counsel shall so advise both complainant and respondent by letter.
- C. The complainant may bring an action in Superior Court in accordance with A.R.S. § 16-957(C) if the Commission finds there is no reason to believe a violation of a statute or rule over which the Commission has jurisdiction has occurred or otherwise terminates its proceedings.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R.
588, effective November 27, 2001 (Supp. 02-1).

R2-20-209. Investigation

- A. The Commission shall conduct an investigation in any case in which the Commission finds reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or is about to occur.
- B. The Commission's investigation may include, but is not limited to, field investigations, audits, and other methods of information gathering.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R.
588, effective November 27, 2001 (Supp. 02-1).

R2-20-210. Written Questions Under Order

The Commission may issue an order requiring any person to submit sworn, written answers to written questions and may specify a date by which such answers must be submitted to the Commission.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R.
588, effective November 27, 2001 (Supp. 02-1).
Amended by exempt rulemaking at 9 A.A.R. 3511, effective May 21, 2002 (Supp. 03-3).

R2-20-211. Subpoenas and Subpoenas Duces Tecum; Depositions

- A. The Commission may authorize its Administrative Counsel or Assistant Attorney General to issue subpoenas requiring the

attendance and testimony of any person by deposition and to issue subpoenas duces tecum for the production of documentary or other tangible evidence in connection with a deposition or otherwise.

- B. If the Commission orders oral testimony to be taken by deposition or for documents to be produced, the subpoena shall so state and shall advise the deponent or person subpoenaed that all testimony will be under oath. The Commission may authorize its Administrative Counsel to take a deposition and have the power to administer oaths.
- C. The deponent shall have the opportunity to review and sign depositions taken pursuant to this rule.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R.
588, effective November 27, 2001 (Supp. 02-1).

R2-20-212. Service of Subpoenas, Orders and Notifications

- A. Delivery of subpoenas, orders and notifications to a natural person may be made by handing a copy to the person, or leaving a copy at his or her office with the person in charge thereof, by leaving a copy at his or her dwelling place or usual place of abode with a person of suitable age and discretion residing therein, or by mailing a copy by registered or certified mail to his or her last known address, or by any other method whereby actual notice is given.
- B. When the person to be served is not an individual, delivery of subpoenas, orders and notifications may be made by mailing a copy by registered or certified mail to the person at its place of business or by handing a copy to a registered agent for service, or to any officer, director, or agent in charge of any office of such person, or by mailing a copy by registered or certified mail to such representative at his or her last known address, or by any other method whereby actual notice is given.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R.
588, effective November 27, 2001 (Supp. 02-1).

R2-20-213. Motions to Quash or Modify a Subpoena

- A. Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than five days after the date of receipt of such subpoena, apply to the Commission to quash or modify such subpoena, accompanying such application with a brief statement of the reasons therefore.
- B. The Commission may deny the application, quash the subpoena or modify the subpoena.
- C. The person subpoenaed and the Administrative Counsel may agree to change the date, time, or place of a deposition or for the production of documents without affecting the force and effect of the subpoena, but such agreements shall be confirmed in writing.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R.
588, effective November 27, 2001 (Supp. 02-1).

R2-20-214. The Probable Cause to Believe Recommendation; Briefing Procedures

- A. Upon completion of the investigation conducted pursuant to R2-20-209, the Administrative Counsel shall prepare a brief setting forth his or her position on the factual and legal issues of the case and containing a recommendation on whether the Commission should find probable cause to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or is about to occur.
- B. The Administrative Counsel shall notify each respondent of the recommendation and enclose a copy of his or her brief.

- C. Within 10 days from receipt of the Administrative Counsel's brief, the respondent may file a brief with the Commission setting forth the respondent's position on the factual and legal issues of the case.
- D. After reviewing the respondent's brief, the Administrative Counsel shall promptly advise the Commission in writing whether he or she intends to proceed with the recommendation or to withdraw the recommendation from Commission consideration.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-215. The Probable Cause to Believe Finding; Notification

- A. If the Commission, after having found reason to believe and after following the procedures set forth in R2-20-214, determines by an affirmative vote of at least three of its members that there is probable cause to believe that a respondent has violated a statute or rule over which the Commission has jurisdiction, the Commission shall authorize the Executive Director to so notify the respondent by an order, that states the nature of the violation, pursuant to A.R.S. § 16-957.
- B. If the Commission finds no probable cause to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or otherwise orders a termination of Commission proceedings, it shall authorize the Executive Director to notify both respondent and complainant by letter that the proceeding has ended. The Executive Director's letter also will inform the parties that the Commission is not precluded from taking action on this matter in the future if evidence is discovered which may alter the decision of the Commission.
- C. If the Commission makes a finding that the respondent has violated a statute or rule over which the Commission has jurisdiction pursuant to subsection (A) of this rule, the respondent will be notified of his or her right to appeal the decision pursuant to the Arizona Administrative Procedures Act, A.R.S. § 41-1092.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).
Amended by exempt rulemaking at 9 A.A.R. 3511, effective May 21, 2002 (Supp. 03-3).

R2-20-216. Conciliation

- A. Upon a Commission finding of probable cause to believe that the respondent has violated a statute or rule over which the Commission has jurisdiction, the Executive Director shall attempt to settle the matter as authorized by A.R.S. § 16-957(A) by informal methods of administrative settlement or conciliation, and shall attempt to reach a tentative conciliation agreement with the respondent.
- B. A conciliation agreement pursuant to subsection (A) of this Section is not binding upon either party unless and until it is signed by the respondent and by the Executive Director upon approval by the affirmative vote of at least three members of the Commission.
- C. If a conciliation agreement is reached between the Commission and the respondent, the Executive Director shall send a copy of the signed agreement to both complainant and respondent.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

Amended by exempt rulemaking at 9 A.A.R. 3511, effective May 21, 2002 (Supp. 03-3).

R2-20-217. Enforcement Proceedings

- A. Upon a finding of probable cause that the alleged violator remains out of compliance, the Executive Director may recommend to the Commission that the Commission authorize the issuance of an order and assessment of civil penalties pursuant to A.R.S. § 16-957(B).
- B. Upon recommendation of the Executive Director, the Commission may, by an affirmative vote of at least three of its members, authorize the Executive Director to issue an order and assess civil penalties pursuant to A.R.S. § 16-957(B).

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).
Amended by exempt rulemaking at 9 A.A.R. 3511, effective May 21, 2002 (Supp. 03-3).

R2-20-218. Public Disclosure of Commission Action

- A. If the Commission makes a finding pursuant to R2-20-207, R2-20-208, or R2-20-215 or otherwise terminates its proceedings, the Commission shall make its findings public and notify the complainant and respondent.
- B. If the Commission approves a conciliation agreement pursuant to R2-20-216, the Commission shall make the conciliation agreement public.
- C. For any compliance matter in which the Commission commences an enforcement proceeding pursuant to R2-20-217, the Commission will make public the investigator materials in the enforcement and litigation files in accordance with public records laws, A.R.S. § 39-101, and the Commission shall send the complainant and the respondent the required notification of the final disposition of the action. The final disposition may consist of a final agency decision.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-219. Repealed

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 9 A.A.R. 3511, effective May 21, 2002 (Supp. 03-3).

R2-20-220. Ex Parte Communications

- A. In order to avoid the possibility of prejudice, real or apparent, to the public interest in enforcement actions pending before the Commission pursuant to its compliance procedures, except to the extent required for the disposition of ex parte matters as required by law (for example, during the normal course of an investigation or a conciliation effort), no interested person outside the agency shall make or cause to be made to any Commissioner or any member of any Commission staff any ex parte communication relative to the factual or legal merits of any enforcement action, nor shall any Commissioner or member of the Commission's staff make or entertain any such ex parte communications.
- B. This rule shall apply from the time a complaint is filed with the Commission or from the time that the Commission determines on the basis of information ascertained in the normal course of its statutory responsibilities that it has reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or may occur, and remains in force until the Commission has finally concluded all action with respect to the matter in question.

- C. Nothing in this Section shall be construed to prohibit contact between a respondent or respondent's attorney and any attorney or the Administrative Counsel or the Assistant Attorney General in the course of representing the Commission or the respondent with respect to an enforcement proceeding or civil action. No statement made by a Commission attorney or staff member shall bind or estop the Commission.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R.
588, effective November 27, 2001 (Supp. 02-1).

R2-20-221. Representation by Counsel; Notification

- A. If a respondent wishes to be represented by counsel with regard to any matter pending before the Commission, respondent shall so advise the Commission by sending a letter of representation signed by the respondent, which letter shall state the following:
1. The name, address, and telephone number of the counsel; and
 2. A statement authorizing such counsel to receive any and all notifications and other communications from the Commission on behalf of respondent.
- B. Upon receipt of a letter of representation, the Commission shall have no contact with respondent except through the designated counsel unless authorized in writing by respondent. The Commission will send a copy of this letter to the respondent's attorney.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R.
588, effective November 27, 2001 (Supp. 02-1).

R2-20-222. Civil Penalties

A civil penalty negotiated by the Commission or imposed by a court for a violation of the Act shall not exceed the greater of \$10,000 or an amount equal to any contribution or expenditure involved in the violation. In the case of a knowing and willful violation, the civil penalty shall not exceed the greater of \$15,000 or an amount equal to 200 percent of any contribution or expenditure involved in the violation.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R.
588, effective November 27, 2001 (Supp. 02-1).

R2-20-223. Notice of Appealable Agency Action

If the Commission makes a probable cause finding pursuant to R2-20-215 or decides to initiate an enforcement proceeding pursuant to R2-20-218, the Assistant Attorney General (AAG) shall draft and serve notice of an appealable agency action pursuant to A.R.S. § 41-1092.03 and § 41-1092.04 on the respondent. The notice shall identify the following:

1. The statute or rule violated;
2. A description of the respondent's right to request a hearing and to request an informal settlement conference; and
3. A description of what the respondent may do if the respondent wishes to remedy the situation without appealing the Commission's decision.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R.
588, effective November 27, 2001 (Supp. 02-1).

R2-20-224. Request for an Administrative Hearing

- A. The respondent must file a request for a hearing with the Commission within 30 days of receipt of the notice prescribed in R2-20-223.
- B. If the respondent requests a hearing, the AAG shall notify the Office of Administrative Hearings (OAH) of the appeal and

shall coordinate a hearing date with the Commission's AAG and Commission staff that may be called as witnesses and OAH. The hearing must be held within 60 days after the notice of appeal is filed with the Commission.

- C. The AAG shall prepare and serve a notice of hearing on all parties to the appeal at least 30 days before the hearing date, unless and expedited hearing is requested and granted. The notice of hearing shall be drafted in accordance with A.R.S. § 41-1092.05(D).

Historical Note

New Section made by exempt rulemaking at 8 A.A.R.
588, effective November 27, 2001 (Supp. 02-1).

R2-20-225. Informal Settlement Conference

- A. If the respondent requests an informal settlement conference, the informal settlement conference shall be held within 15 days after the Commission receives the request. A request for an informal settlement conference shall be in writing and must be filed with the Commission no later than 20 days before the hearing date. A person with the authority to act on behalf of the Commission must represent the Commission at the conference. The AAG shall attend the settlement conference, but shall not be the individual authorized to act on behalf of the Commission.
- B. The Commission representative shall notify the appellant in writing that the statements, either written or oral, made by the appellant at the conference, including a written document, created or expressed solely for the purpose of settlement negotiations, are inadmissible in any subsequent administrative hearing. The parties participating in the settlement conference waive their right to object to the participation of the agency representative in the final administrative decision.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R.
588, effective November 27, 2001 (Supp. 02-1).

R2-20-226. Administrative Hearing

- A. If the matter continues to a hearing, the hearing shall be held in accordance with A.R.S. § 41-1092.07. The Administrative Law Judge (ALJ) must issue a written recommended decision within 20 days after the hearing is concluded.
- B. If the enforcement action occurs within six months of the primary or general election, the Commission will request an expedited review of the matter

Historical Note

New Section made by exempt rulemaking at 8 A.A.R.
588, effective November 27, 2001 (Supp. 02-1).

R2-20-227. Review of Administrative Decision by Commission

- A. Within 30 days after the date OAH sends a copy of the ALJ's decision to the Commission, the Commission may review the ALJ's decision and accept, reject or modify the decision.
- B. If the Commission declines to review the ALJ's decision, the Commission shall serve a copy of the decision on all parties. If the Commission modifies or rejects the decision, the Commission shall file with OAH and serve on all parties, a copy of the ALJ's decision with the rejection or modification and a written justification setting forth the reasons for the rejection or modification. If the Commission accepts, rejects or modifies the decision, the Commission's decision will be certified as final.
- C. If the Commission does not accept, reject or modify the decision within 30 days after OAH sends the ALJ's decision to the Commission, the ALJ's decision will be certified as final.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-228. Judicial Review

A party may appeal a final administrative decision pursuant to A.R.S. § 12-901 et seq. (Judicial Review of Administrative Decisions). A party does not have the right to judicial review unless that party first exhausts its administrative remedies by going through the above steps. After a hearing has been held and a final administrative decision has been entered pursuant to § 41-1092.08, a party is not required to file a motion for rehearing or review of the decision in order to exhaust the party's administrative remedies.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-229. Debates Sponsored by the Commission

- A. For purposes of this Section, each primary or general election shall be considered a separate election.
- B. Pursuant to A.R.S. § 16-956(A)(2), all participating candidates certified pursuant to A.R.S. § 16-947, shall attend and participate in the debates sponsored by the Commission.
- C. Unless exempted under R2-20-230 or R2-20-231, if a participating candidate fails to participate in any Commission-sponsored debate, the participating candidate shall:
 1. Make no further expenditures for that specific election;
 2. Return all funding provided pursuant to A.R.S. § 16-951 within 30 days of the debate in which the candidate failed to participate; and
 3. Be ineligible to receive any further equalizing funds for that election.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-230. Exemption from Participating in a Debate

- A. Notwithstanding R2-20-229, a participating candidate may request to be exempt from participating in a required debate if the candidate does the following:
 1. Submit a written request to the Commission at least one week prior to the scheduled debate; and
 2. State the reasons and circumstances justifying the request for exemption.
- B. After examining the request made pursuant to subsection (A) of this Section, the Commission will exempt a candidate from participating in a debate if at least three Commissioners determine that the circumstances are:
 1. Beyond the control of the candidate;
 2. Of such nature that a reasonable person would find the failure to attend justifiable or excusable; or
 3. Good cause, as defined in A.R.S. § 16-918(E).

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-231. Request for Reconsideration

- A. A participating candidate who fails to participate in a required debate, without exemption pursuant to R2-20-230, may submit a request for reconsideration to the Commission. The candidate's request for reconsideration shall:
 1. State the reason the candidate failed to participate in the debate; and
 2. Be submitted to the Commission no later than five business days after the date of the debate the candidate failed to attend.

- B. After examining the request for reconsideration, the Commission will excuse a candidate from the penalties imposed pursuant to R2-20-229 if at least three Commissioners determine that the circumstances were:
 1. Beyond the control of the candidate;
 2. Of such nature that a reasonable person would find the failure to attend justifiable or excusable; or
 3. Good cause, as defined in A.R.S. § 16-918(E).

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

ARTICLE 3. STANDARD OF CONDUCT FOR COMMISSIONERS AND EMPLOYEES**R2-20-301. Purpose and Applicability**

- A. The Commission is committed to implementing the Act in an honest, independent, and impartial fashion and to seeking to uphold public confidence in the integrity of the electoral system. To ensure public trust in the fairness and integrity of the Arizona elections process, all Commissioners and employees must observe the highest standards of conduct. This Article prescribes standards of ethical conduct for Commissioners and employees of the Commission relating to conflicts of interest arising from outside employment, private businesses, professional activities, political activities, and financial interests. The avoidance of misconduct and conflicts of interest on the part of the Commissioners and the employees through informed judgment is indispensable to the maintenance of these prescribed ethical standards. Attainment of these goals necessitates strict and absolute fairness and impartiality in the administration of the law.
- B. This Article applies to all persons included within the terms "employee" and "Commissioner" of the Commission.
- C. These Standards of Conduct shall be construed in accordance with any applicable laws, regulations, and agreements between the Commission and a labor organization.
- D. Pursuant to A.R.S. § 16-955(I), for three years after a Commissioner completes his or her tenure, Commissioners shall not seek or hold any public office, serve as an officer of any political committee, or employ or be employed as a lobbyist.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-302. Definitions

The following terms apply in all Citizens Clean Elections Act matters:

1. "Commission" means the Citizens Clean Elections Commission of Arizona.
2. "Commissioner" means a voting member of the Commission, appointed pursuant to A.R.S. § 16-955.
3. "Conflict of interest" means a situation in which a Commissioner's or an employee's private interest is or appears to be inconsistent with the efficient and impartial conduct of his or her official duties and responsibilities.
4. "Employee" means an employee or staff member of the Commission.
5. "Former employee" means one who was, and is no longer, an employee of the Commission.
6. "Official responsibility" means the direct administrative or operating authority, whether intermediate or final, to approve, disapprove, or otherwise direct Commission action. Official responsibility may be exercised alone or with others and either personally or through subordinates.
7. "Outside employment" or "outside activity" means any work, service or other activity performed by a Commis-

sioner or employee other than in the performance of the Commissioner's or employee's official employment duties. It includes such activities as writing and editing, publishing, teaching, lecturing, consulting, self-employment, and other services or work performed, with or without compensation.

8. "Person" means an individual, corporation, company, association, firm, partnership, society, joint stock company, political committee, or other group, organization, or institution.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-303. Notification to Commissioners and Employees

- A. The provisions of this Article shall be brought to the attention of, and made available to, each Commissioner and employee by furnishing a copy at the time of final publication. The provisions of this Article shall further be brought to the attention of such Commissioners and employees at least annually thereafter.
- B. The provisions of this Article shall be brought to the attention of each new Commissioner and new employee by furnishing a copy at the time of entrance of duty, and by such other methods of information and education as the Commission may prescribe.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-304. Interpretation and Advisory Service

Commissioners or employees seeking advice and guidance on questions of conflict of interest and on other matters covered by this Article should consult with the Commission's Chair or Executive Director. The Commission's Chair or Executive Director should be consulted prior to the undertaking of any action that might violate this Article governing the conduct of Commissioners or employees.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-305. Reporting Suspected Violations

- A. Commissioners and employees who have information, which causes them to believe that there has been a violation of a statute or a rule set forth in this Article, shall report promptly, in writing, such incident to the Commission's Chair or Executive Director.
- B. When information available to the Commission indicates a conflict between the interests of a Commissioner or employee and the performance of his or her Commission duties, the Commissioner or employee shall be provided an opportunity to explain the conflict or appearance of conflict in writing.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-306. Disciplinary and Other Remedial Action

- A. A violation of this Article by an employee may be cause for disciplinary action, which may be in addition to any penalty prescribed by law.
- B. When the Commission's Executive Director determines that an employee may have or appears to have a conflict of interest, the Commission's Executive Director may question the employee in the matter and gather other information. The Commission's Executive Director and the employee's supervisor shall discuss with the employee possible ways of eliminat-

ing the conflict or appearance of conflict. If the Commission's Executive Director, after consultation with the employee's supervisor, concludes that remedial action should be taken, he or she shall refer a statement to the Commission containing his or her recommendation for such action. The Commission, after consideration of the employee's explanation and the results of any investigation, may direct appropriate remedial action as it deems necessary.

- C. Remedial action pursuant to subsection (B) of this Section may include, but is not limited to:
 1. Changes in assigned duties;
 2. Divestment by the employee of his or her conflicting interest;
 3. Disqualification for particular action; or
 4. Disciplinary action.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-307. General Prohibited Conduct

- A. A Commissioner or employee shall avoid any action whether or not specifically prohibited by this Section that might result in, or create the appearance of:
 1. Using public office for unlawful private gain;
 2. Giving favorable or unfavorable treatment to any person or organization due to any partisan or political consideration;
 3. Impeding Commission efficiency or economy;
 4. Losing impartiality.
 5. Making a Commission decision without Commission approval; or
 6. Adversely affecting the confidence of the public in the integrity of the Commission.
- B. A Commissioner or employee of the Commission shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:
 1. Has, or is seeking to obtain, contractual or other business or financial relations with the Commission;
 2. Conducts operations or activities that are regulated or examined by the Commission; or
 3. Has an interest that may be substantially affected by the performance or nonperformance of the Commissioner or employee's official duty.
- C. Subsection (B) of this Section shall not apply in the following circumstances:
 1. When circumstances make it clear that obvious family or personal relationships, rather than the business of the persons concerned, are the motivating factors;
 2. To the acceptance of food, refreshments, and accompanying entertainment of nominal value in the ordinary course of a social occasion or a luncheon or dinner meeting or other function where a Commissioner or an employee is properly in attendance;
 3. To the acceptance of unsolicited advertising or promotional material or other items of nominal value such as pens, pencils, note pads, calendars; and
 4. To the acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities, such as home mortgage loans.
- D. A Commissioner or an employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself or herself. However, this subsection does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a spe-

cial occasion such as birthday, holiday, marriage, illness, or retirement.

- E.** This Section does not preclude a Commissioner or employee from receipt of reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this Article for which no state payment or reimbursement is made. However, this Section does not allow a Commissioner or employee to be reimbursed, or payment to be made on his or her behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits, nor does it allow a Commissioner or employee to be reimbursed by a person for travel on official business under Commission orders when reimbursement is prescribed by statute.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R.
588, effective November 27, 2001 (Supp. 02-1).

R2-20-308. Outside Employment or Activities

- A.** A Commissioner or employee shall not engage in outside employment that is incompatible with the full discharge of his or her duties as a Commissioner or employee.
- B.** Incompatible outside employment or other activities by Commissioners or employees include, but are not limited to:
1. Outside employment or other activities that involve illegal activities;
 2. Outside employment or other activities that would give rise to a real or apparent conflict of interest situation even though no violation of a specific statutory provision was involved;
 3. Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances where acceptance may result in, or create the appearance of, a conflict of interest;
 4. Outside employment or other activities that might bring discredit upon the state or Commission;
 5. Outside employment or other activities that establish relationships or property interests that may result in a conflict between the Commissioner's or the employee's private interests and official duties;
 6. Outside employment or other activities which would involve any contractor or subcontractor connected with any work performed for the Commission or would involve any person or organization in a position to gain advantage in its dealings with the state through the Commissioner's or employee's exercise of his or her official duties;
 7. Outside employment or other activities that may be construed by the public to be the official acts of the Commission. In any permissible outside employment, care shall be taken to ensure that names and titles of Commissioners and employees are not used to give the impression that the activity is officially endorsed or approved by the Commission or is part of the Commission's activities;
 8. Outside employment or other activities which would involve use by a Commissioner or employee of his or her official duty time; use of official facilities, including office space, machines, or supplies, at any time; or use of the services of other employees during their official duty hours;
 9. Outside employment or other activities which impair the Commissioner's or employee's mental or physical capacities to perform Commission duties and responsibilities in an acceptable manner; or
 10. Use of information obtained as a result of state employment that is not freely available to the general public or would not be made available upon request. However,

written authorization for the use of any such information may be given when the Commission determines that such use would be in the public interest.

- C.** Commissioners and employees shall not receive any salary or anything of monetary value from a private source as compensation for the Commissioner's or employee's services to the state.
- D.** Commissioners and employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law or this Article. However, Commissioners and employees shall not, either with or without compensation, engage in teaching or writing that is dependent on information obtained as a result of his or her Commission employment, except when that information has been made available to the public or will be made available on request, or when the Commission gives written authorization for the use of nonpublic information on the basis that the use is in the public interest.
- E.** This Section does not preclude a Commissioner or employee from participating in the activities of or acceptance of an award for meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit, educational, recreational, public service, or civic organization.
- F.** An employee who intends to engage in outside employment shall obtain the approval of the Executive Director. The request shall include the name of the person, group, or organization for whom the work is to be performed, the nature of the services to be rendered, the proposed hours of work, or approximate dates of employment, and the employee's certification as to whether the outside employment (including teaching, writing, or lecturing) will depend in any way on information obtained as a result of the employee's official position. The employee will receive, from the Executive Director, written notice of approval or disapproval of any written request. A record of the decision shall be placed in each employee's official personnel folder.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R.
588, effective November 27, 2001 (Supp. 02-1).

R2-20-309. Financial Interests

- A.** Commissioners and employees shall not engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through the Commissioner's or employee's duties or employment.
- B.** Commissioners and employees shall not have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with the Commissioner's or employee's official duties and responsibilities, except in cases where the Commissioner or employee makes full disclosure, and disqualifies himself or herself from participating in any decisions, approval, disapproval, recommendation, the rendering of advice, investigation, or in any proceeding of the Commission in which the financial interest is or appears to be affected. Full disclosure by a Commissioner or employee will require that individual to submit a written statement to the Executive Director or Chair disclosing the particular financial interest which conflicts substantially, or appears to conflict substantially, with the Commissioner's or employee's duties and responsibilities.
- C.** Commissioners and employees shall disqualify themselves from a proceeding in which the Commissioner's or employee's impartiality might reasonably be questioned, such as in a situation where the Commissioner or employee knows that he or she, or his or her family member, has an interest in the subject matter in controversy or is a party to the proceeding, or has

any other interest that could be substantially affected by the outcome of the proceeding.

- D.** This Section does not preclude a Commissioner or employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Commission, as long as the Commissioner's or employee's financial interest does not conflict with official Commission duties.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-310. Political and Organization Activity

- A.** Due to the Commission's role in the political process, the following restrictions on political activities are required:
1. Commissioners and employees shall not advocate for the election or defeat of a candidate, nor make contributions to a candidate, political party, or political committee subject to the jurisdiction of the Commission. Commissioners and employees, however, are not prohibited from signing candidate nomination petitions;
 2. Commissioners and employees shall not provide volunteer or paid services for a candidate, political party, or political committee subject to the jurisdiction of the Commission; and
 3. Commissioners and employees not shall display partisan buttons, badges, or other insignia on Commission premises.
- B.** Employees on leave, leave without pay, or on furlough or terminal leave, even though the employees' resignations have been accepted, are subject to the restrictions of this Section. A separated employee who has received a lump-sum payment for annual leave, however, is not subject to the restrictions during the period covered by the lump-sum payment or thereafter, provided he or she does not return to state employment during that period. An employee is not permitted to take a leave of absence to work with a political candidate, committee, or organization or become a candidate for office despite any understanding that he or she will resign his or her position if nominated or elected.
- C.** A Commissioner or employee is accountable for political activity by another person acting as his or her agent or under the Commissioner's or employee's direction or control if the Commissioner or employee is thus accomplishing what he or she may not lawfully do directly and openly.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-311. Membership in Associations

Commissioners or employees who are members of nongovernmental associations or organizations shall avoid activities on behalf of those associations or organizations that are incompatible with their official positions.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-312. Use of State Property

A Commissioner or employee shall not directly or indirectly use, or allow the use of, state property of any kind, including property leased to the state, for other than officially approved activities. Commissioners and employees have a positive duty to protect and conserve state property including equipment, supplies, and other property entrusted or issued to him or her.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

ARTICLE 4. RESERVED

ARTICLE 5. RULEMAKING

R2-20-501. Purpose and Scope

This Article prescribes the procedures for the submission, consideration, and disposition of rulemaking petitions filed with the Commission, establishes the conditions under which the Commission may identify and respond to petitions for rulemaking, and informs the public of the procedures the agency follows in response to such petitions.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-502. Procedural Requirements

- A.** Any interested person may file with the Commission a written petition for the issuance, amendment, or repeal of an administrative rule implementing any of the Citizens Clean Elections Act.
- B.** The petition shall:
1. Include the name and address of the petitioner or agent. An authorized agent of the petitioner may submit the petition, but the agent shall disclose the identity of his or her principal;
 2. Identify itself as a petition for the issuance, amendment, or repeal of a rule;
 3. Identify the specific Section of the regulations to be affected;
 4. Set forth the factual and legal grounds on which the petitioner relies, in support of the proposed action; and
 5. Be addressed and submitted to the Commission.
- C.** The petition may include draft regulatory language that would effectuate the petitioner's proposal.
- D.** The Commission may, in its discretion, treat a document that fails to conform to the format requirements of subsection (B) of this Section as a basis for rulemaking addressing issues raised in a petition.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-503. Processing of Petitions

- A.** Within 10 days of receiving a petition, the Commission shall send a letter to the petitioner acknowledging the receipt of the petition and informing the petitioner that the Commission will review and decide whether to deny or accept the petition. To assist in determining whether a rulemaking proceeding should be initiated, the Commission may publish a Notice of Availability on the Commission web site or otherwise post notice, stating that the petition is available for public inspection in the Commission's Office and that statements in support of or in opposition to the petition may be filed within a stated period after publication of the Notice of Availability.
- B.** If the Commission decides a public hearing on the petition would help determine whether to commence a rulemaking proceeding, it will publish an appropriate notice of the hearing on the Commission web site or otherwise post notice, to notify interested persons and to invite their participation in the hearing.
- C.** The Commission will consider all comments regarding whether rulemaking proceedings should be initiated.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R.
588, effective November 27, 2001 (Supp. 02-1).

R2-20-504. Disposition of Petitions

- A. After considering the comments and any other information relevant to the subject matter of the petition, the Commission will decide whether to initiate rulemaking based on the filed petition.
- B. If the Commission decides to initiate rulemaking proceedings, it shall file a Notice of Proposed Rulemaking and the proposed rule, in the format prescribed in A.R.S. § 41-1022, with the Secretary of State's office for publication in the Arizona Administrative Register. After the Commission approves the proposed rule, the Commission will accept public comments on the proposed rule for 60 days. After consideration of the comments received in the 60-day comment period, the Commission may adopt the rule in open meeting.
- C. If the Commission decides not to initiate rulemaking, it will give notice of this action by publishing a Notice of Disposition on the Commission web site, or otherwise post notice, and by sending a letter to the petitioner. The Notice of Disposition will include a brief statement of the grounds for the Commission's decision.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R.
588, effective November 27, 2001 (Supp. 02-1).

R2-20-505. Commission Considerations

The Commission's decision on the petition for rulemaking may include, but will not be limited to, the following considerations:

1. The Commission's statutory authority;
2. Policy considerations;
3. The desirability of proceeding on a case-by-case basis;
4. The necessity or desirability of statutory revision;
5. Available agency resources; and
6. Substantive policy statements.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R.
588, effective November 27, 2001 (Supp. 02-1).

R2-20-506. Administrative Record

- A. The Commission record for the petition process consists of the following:
 1. The petition, including all attachments on which it relies, filed by the petitioner;
 2. Written comments on the petition that have been circulated to and considered by the Commission, including attachments submitted as a part of the comments;
 3. Agenda documents, in the form they are circulated to and considered by the Commission in the course of the petition process;
 4. All notices published on the Commission web site and in the Arizona Administrative Register, including the Notice of Availability and Notice of Disposition;
 5. The transcripts or audiotapes of any public hearing on the petition;
 6. All correspondence between the Commission and the petitioner, other commentators and state agencies pertaining to Commission consideration of the petition; and
 7. The Commission's decision on the petition, including all documents identified or filed by the Commission as part of the record relied on in reaching its final decision.
- B. The administrative record specified in subsection (A) of this Section is the exclusive record for the Commission's decision.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R.
588, effective November 27, 2001 (Supp. 02-1).

ARTICLE 6. EX PARTE COMMUNICATIONS**R2-20-601. Purpose and Scope**

This Article prescribes procedures for handling ex parte communications made regarding Commission audits, investigations, and litigation. Rules governing such communications made in connection with Commission enforcement actions are found at R2-20-220.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R.
588, effective November 27, 2001 (Supp. 02-1).

R2-20-602. Definitions

- A. "Ex parte communication" means any written or oral communication, by any person outside the agency to any Commissioner or any employee, which imparts information or argument regarding prospective Commission action or potential action concerning:
 1. Any ongoing audit;
 2. Any pending investigation; or
 3. Any litigation matter.
- B. "Ex parte communication" does not include the following communications:
 1. Public statements by any person in a public forum; or
 2. Statements or inquiries by any person limited to the procedural status of an open proceeding involving a Commission audit, investigation, or litigation matter.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R.
588, effective November 27, 2001 (Supp. 02-1).

R2-20-603. Audits, Investigations, and Litigation

- A. In order to avoid the possibility of prejudice, real or apparent, in Commission decision making, no person outside the Commission shall make, or cause to be made, to any Commissioner or employee, any ex parte communication regarding any audit undertaken by the Commission or any pending or prospective Commission decision regarding any investigation or litigation, including whether to initiate, settle, appeal, or any other decision concerning an investigation or litigation matter.
- B. A Commissioner or employee who receives an oral ex parte communication concerning any matters addressed in subsection (A) of this Section shall attempt to prevent the communication. If unsuccessful in preventing the communication, the Commissioner or employee shall advise the person making the communication that he or she will not consider the communication and shall, as soon after the communication as is reasonably possible, but no later than three business days after the communication, or prior to the next Commission discussion of the matter, whichever is earlier, prepare a statement setting forth the substance and circumstances of the communication, and deliver the statement to the Executive Director for placement in the applicable case file.
- C. A Commissioner or employee who receives a written ex parte communication concerning any matters addressed in subsection (A) of this Section shall, as soon after the communication as is reasonably possible but no later than three business days after the communication, or prior to the next Commission discussion of the matter, whichever is earlier, deliver a copy of the communication to the Executive Director for placement in the applicable case file.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R.
588, effective November 27, 2001 (Supp. 02-1).

R2-20-604. Sanctions

Any person who becomes aware of a possible violation of this Article shall notify the Executive Director in writing of the facts and circumstances of the alleged violation. The Executive Director shall recommend to the Commission the appropriate action to be taken. The Commission shall determine the appropriate action by at least three votes.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

ARTICLE 7. AUDITS AND REPAYMENTS**R2-20-701. Purpose and Scope**

This Article prescribes procedures for conducting audits of and ordering repayment of public monies from participating candidates.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-702. General

The Commission may conduct a thorough examination and audit of the receipts, disbursements, debts, and obligations of each candidate, his or her authorized committee, and agents of participating candidates or committees. In addition, the Commission may conduct other examinations and audits as it deems necessary to carry out the provisions of the Act and regulations. Information obtained pursuant to any audit and examination may be used by the Commission as the basis, or partial basis, for its repayment determinations.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-703. Conduct of Fieldwork

- A. The Commission will provide the candidate's authorized committee two days' notice of the Commission's intention to commence fieldwork on the audit and examination. The Commission will conduct fieldwork at a site provided by the committee. During or after audit fieldwork, the Commission may request additional or updated information, which expands the coverage dates of information previously provided. During or after audit fieldwork, the Commission may also request additional information that was created by or becomes available to the committee that is of assistance in the Commission's audit. The committee shall produce the additional or updated information no later than two days after service of the Commission's request.
- B. On the date scheduled for the commencement of fieldwork, the candidate or his or her authorized committee shall provide Commission staff with office space and committee records.
- C. On the date scheduled for the commencement of fieldwork, the candidate or his or her authorized committee shall have committee personnel present at the site of the fieldwork. Such personnel shall be familiar with the committee's records and operation and shall be available to Commission staff to answer questions and to aid in locating records.
- D. If the candidate or his or her authorized committee fails to provide adequate office space, personnel or committee records, the Commission may seek judicial intervention to enforce the request.
- E. If, in the course of the audit process, a dispute arises over the documentation sought, the candidate may seek review by the Commission of the issues raised. To seek review, the candidate shall submit a written statement within five days after the disputed Commission staff request is made, describing the dispute and indicating the candidate's proposed alternatives.

- F. Fieldwork will include the following steps designed to keep the candidate and committee informed as to the progress of the audit and to expedite the process:

1. Entrance conference. At the outset of the fieldwork, Commission staff will hold an entrance conference, at which the candidate's representatives will be advised of the purpose of the audit and the general procedures to be followed. Future requirements of the candidate and his or her authorized committee, such as possible repayments to the Fund, also will be discussed. Committee representatives shall provide information and records necessary to conduct the audit, and Commission staff will be available to answer committee questions.
2. Review of records. During the fieldwork, Commission staff will review committee records and may conduct interviews of committee personnel. Commission staff will be available to explain aspects of the audit and examination as it progresses. Additional meetings between Commission staff and committee personnel may be held during the fieldwork to discuss possible audit findings and to resolve issues arising during the course of the audit.
3. Exit conference. At the conclusion of the fieldwork, Commission staff will hold an exit conference to discuss with committee representatives the staff's preliminary findings and recommendations that the staff anticipates it will present to the Commission for approval. Commission staff will advise committee representatives at this conference of the committee's opportunity to respond to these preliminary findings; the projected timetables regarding the issuance of the Preliminary Audit Report, the Final Audit Report, and any repayment determination; the committee's opportunity for an administrative review of any repayment determination; and the procedures involved in Commission repayment determinations.

- G. Commission staff may conduct additional fieldwork after the completion of the fieldwork conducted pursuant to subsections (A) through (F). The Commission will notify the candidate and his or her authorized committee if follow-up fieldwork is necessary. Factors that may necessitate such follow-up fieldwork include, but are not limited to, the following:
 1. Committee response to audit findings;
 2. Financial activity of the committee subsequent to the fieldwork conducted; and
 3. Committee responses to Commission repayment determinations.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-704. Preliminary Audit Report

- A. Commission staff will prepare a written Preliminary Audit Report, which will be provided to the committee after it is approved by an affirmative vote of at least three members of the Commission. The Preliminary Audit Report may include:
 1. An evaluation of procedures and systems employed by the candidate and committee to comply with applicable provisions of the Act and Commission rules;
 2. The accuracy of statements and reports filed with the Commission by the candidate and committee; and
 3. Preliminary findings and calculations regarding future repayments to the Fund.
- B. The candidate and his or her authorized committee may submit in writing within 30 calendar days after receipt of the Preliminary Audit Report, legal and factual materials disputing or

commenting on the proposed findings contained in the Preliminary Audit Report. In addition, the committee shall submit any additional documentation requested by the Commission.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-705. Final Audit Report

- A. Before voting on whether to approve and issue a Final Audit Report, the Commission will consider any written legal and factual materials timely submitted by the candidate or his or her authorized committee in accordance with R2-20-704. The Commission-approved Final Audit Report may address issues other than those contained in the Preliminary Audit Report.
- B. The Final Audit Report may include a repayment determination made by the Commission and issues that warrant referral for possible enforcement proceedings.
- C. Addenda to the Final Audit Report may be approved and issued by the Commission from time to time as circumstances warrant and as additional information becomes available. Such addenda may be based on follow-up fieldwork conducted, or information ascertained by the Commission in the normal course of carrying out its responsibilities. The procedures set forth in R2-20-704 and subsections (A) and (B) of this Section will be followed in preparing such addenda.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-706. Release of Audit Report

- A. The Commission will consider the Final Audit Report specified in R2-20-705 in an open meeting. The Commission will provide the candidate and the committee with copies of any audit report to be considered in an open meeting 24 hours prior to the public meeting.
- B. Following Commission approval of the Final Audit Report, the report will be forwarded to the committee within five days after the public meeting.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-707. Repayment

A. General.

1. A candidate who has received payments from the Fund shall pay the Fund any amounts that the Commission determines to be repayable under this Article. In making repayment determinations under this Article, the Commission may utilize information obtained from audits and examinations or otherwise obtained by the Commission in carrying out its responsibilities.
2. The Commission will notify the candidate of any repayment determinations made under this Section as soon as possible, but not later than six months after the day of the election. The Commission's issuance of the Final Audit Report to the candidate will constitute notification for purposes of this Article.
3. Once the candidate receives notice of the Commission's repayment determination, the candidate should give preference to the repayment over all other outstanding obligations of his or her committee, except for any taxes owed by the committee.
4. Repayments may be made only from the following sources: personal funds of the candidate, funds in the committee's accounts, and any additional funds raised subject to the limitations and prohibitions of the Act.

- B. The Commission may determine that a participating candidate who has received payments from the Fund must repay the Fund under any of the following circumstances:

1. Payments in excess of candidate's entitlement. If the Commission determines that any portion of the payments made to the candidate was in excess of the aggregate payments to which such candidate was entitled, it will so notify the candidate, and such candidate shall pay to the Fund an amount equal to such portion.
2. Use of funds not for direct campaign expenses. If the Commission determines that any amount of any payment to an eligible candidate from the Fund was used for purposes other than direct campaign purposes described in R2-20-107, it will notify the candidate of the amount so used, and such candidate shall pay to the Fund an amount equal to such amount.
3. Expenditures that were not documented in accordance with reporting requirements, expended in violation of state or federal law, or used to defray expenses resulting from a violation of state or federal law, such as the payment of fines or penalties.
4. Surplus. If the Commission determines that a portion of payments from the Fund remains unspent after all direct campaign expenses have been paid, it shall so notify the candidate, and such candidate shall pay the Fund that portion of surplus funds.
5. Income on investment or other use of payments from the Fund. If the Commission determines that a candidate received any income as a result of an investment or other use of payments from the Fund, it shall so notify the candidate, and such candidate shall pay to the Fund an amount equal to the amount determined to be income, less any Federal, State or local taxes on such income.
6. Unlawful acceptance of contributions by an eligible candidate. If the Commission determines that a participating candidate accepted contributions, other than early contributions or qualifying contributions, it shall notify the candidate of the amount of contributions so accepted, and the candidate shall pay to the Fund an amount equal to such amount, plus any civil penalties assessed.

- C. Repayment determination procedures. The Commission's repayment determination will be made in accordance with the following procedures:

1. Repayment determination. The Commission will provide the candidate with a written notice of its repayment determination. This notice will be included in the Commission's Final Audit Report and will set forth the legal and factual reasons for such determination, as well as the evidence upon which any such determination is based. The candidate shall repay, in accordance with subsection (D), the amount that the Commission has determined to be repayable.
2. Administrative review of repayment determination. If a candidate disputes the Commission's repayment determination, he or she may request an administrative appeal of the determination in accordance with A.R.S. § 41-1092 et seq.

- D. Repayment period.

1. Within 30 days of service of the notice of the Commission's repayment determination, the candidate shall repay the amounts the Commission has determined must be repaid. Upon application by the candidate, the Commission may grant an extension of up to 30 days in which to make repayment.
2. If the candidate requests an administrative appeal of the Commission's repayment determination of this Section,

the time for repayment will be suspended until the Commission has concluded its review of the Administrative Law Judge's (ALJ) decision. Within 30 calendar days after service of the notice of the Commission's review of the ALJ's decision, the candidate shall repay the amounts that the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 30 days in which to make repayment.

3. Interest shall be assessed on all repayments made after the initial 30-day repayment period or the 30-day repayment period established by this Section. The amount of interest due shall be the greater of:
 - a. An amount calculated of simple interest; or
 - b. The amount actually earned on the funds set aside or to be repaid under this rule.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-708. Additional Audits or Repayment Determinations

- A. The Commission may conduct an additional audit and field investigation of any committee in any case in which the Commission finds reason to believe that a violation of a statute or regulation over which the Commission has jurisdiction has occurred or is about to occur.
- B. The Commission may make additional repayment determinations after it has made an initial repayment determination pursuant to R2-20-707. The Commission may make additional repayment determinations where there exist facts not used as the basis for any previous determination. Any such additional repayment determination will be made in accordance with the provisions of this Article.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-709. Unlawful Misrepresentations and Falsification; Refusal to Furnish Books and Records

- A. It shall be unlawful for any person to knowingly and willfully furnish any false, fictitious, or fraudulent evidence, books or information to the Commission, or to include in any evidence, books or information so furnished any misrepresentation of a material fact, or to falsify or conceal any evidence, books or information relevant to a certification by the Commission or any examination and audit by the Commission.
- B. It shall be unlawful for any person to knowingly and willfully fail to furnish to the Commission any records, books or information requested by the Commission.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-710. Documentation of Expenditures

- A. All participating candidates shall have the burden of proving that expenditures made by the candidate or his or her authorized committee were for direct campaign purposes. The candidate and his or her authorized committee shall obtain and furnish to the Commission on request any evidence regarding direct campaign expenses made by the candidate or his or her authorized committee as provided in subsection (B).
- B. All participating candidates shall retain records with respect to each expenditure and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation, and any related materials documenting campaign receipts and disbursements, for a period of three years, and shall present these records to the Commission on request.
- C. All participating candidates shall maintain a list of all capital assets whose purchase price exceeded \$300 when acquired by the campaign. The list shall include a brief description of each capital asset, the purchase price, the date it was acquired, the method of disposition and the amount received in disposition.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).